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No. 73-564

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In the Supreme Court of the United States

OCTOBER TERM, 1973

HERMAN I. SHALLER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Petitioner brought this suit in the Court of Claims challenging as inadequate a $300 incentive award granted him by the Navy. The incentive award was made in recognition of petitioner's work on a test missile recovery system, and petitioner claims he is entitled to an award of $1,568,000.[1] The Trial Commissioner, after reviewing the evidence (Pet. App. 1a-24a), determined that the Navy had not abused its discretion in making the award (Pet. App. 25a-26a):

> (a) plaintiff's contribution was but part of a large number of contributions going to make up a complex and detailed system, (b) plaintiff's contribution and ideas were substantially modified by others in arriv-

[1] The maximum monetary award payable by law is $25,000. 5 U.S.C. 4502.

> ing at a practical and workable system, and (c) plaintiff's proposed system * * * was not feasible, was never used, and contributed only in a general way to the ultimate development of the [missile] recovery systems.

The Court of Claims dismissed petitioner's claim on the basis of the Trial Commissioner's opinion (Pet. App. 1a).

Agencies have broad discretion to make incentive awards, and such awards must be sustained in the absence of a showing of abuse of discretion. *Kempinski* v. *United States,* 164 Ct. Cl. 451, certiorari denied, 377 U.S. 981; *Serbin* v. *United States,* 168 Ct. Cl. 934.[2] The court below determined that there had been no abuse of discretion in the making of petitioner's award, in an opinion (of the Trial Commissioner) on which we rely. Further review of this factual issue is unwarranted.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

NOVEMBER 1973.

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[2] Indeed, it seems reasonably clear that Congress intended to leave the determination of the proper amount of an award—and of whether an award should be granted at all—to the complete discretion of the agency head, except that where he determines to grant an award in excess of $5,000 the propriety of the award is subject to review by the Civil Service Commission. See 5 U.S.C. 4503 and 4502(b) and (d).